FILED

96 692 OCT 23 1996

OFFICE OF THE CLERK

NO. _____

In The
Supreme Court of the United States
October Term, 1996

MACK W. TAYLOR, JR.,

Petitioner,
v.

THE PRINCIPAL FINANCIAL GROUP, INC., AND PRINCIPAL MUTUAL LIFE INSURANCE COMPANY,

Respondents.

On Petition for Writ of Certiorari To The Fifth Circuit Court of Appeals

SUPPLEMENT TO APPENDIX TO PETITION FOR WRIT OF CERTIORARI

MARK D. PIERCE
1444 Montana Avenue
Suite 100
El Paso, Texas 79902
(915) 533-1773

Attorney for Petitioner
Mack W. Taylor, Jr.

14 pp

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MACK W. TAYLOR,	**§**	
	§	
Plaintiff,	**§**	
	§	
vs.	**§**	**EP-94-CA-318-DB**
	§	
THE PRINCIPAL FINANCIAL GROUP, INC. and PRINCIPAL MUTUAL LIFE INSURANCE COMPANY,	**§**	
	§	
	§	
Defendants.	**§**	

MEMORANDUM OPINION

On this day, the Court considered the Defendant's Motion for Summary Judgment, filed March 15, 1995, in the above-captioned cause. A hearing was held on March 30, 1995, and after considering the motion, the responses and replies of the parties, as well as oral arguments, the Court entered an Order granting the Defendant's Motion for Summary Judgment that same day. This Memorandum Opinion is consistent with that Order.

Statement of Facts

This action arises under the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213 (the "ADA") and the Civil Rights Act of 1991, Pub.L.No. 102--106, § 102, 105 Stat. 1071, 1072 (1991). Principal Mutual, Defendants, hired Taylor, the Plaintiff, in September 1990. Taylor became agency manager of Principal Mutual's El Paso office on January 1, 1991. In 1992, Principal Mutual began having problems with Taylor's performance and production in his job and advised that his performance was unsatisfactory. In November 1992, Taylor was formally placed in probation for his poor performance. In June 1993, Taylor's probation was extended for an additional six months. In April of 1993, Taylor disclosed to Principal Mutual that he had been previously diagnosed with Bi-Polar Disorder. On July 7, 1993, Taylor went on disability leave and subsequently filed a claim for disability benefits under his

group and individual disability insurance policies underwritten by Principal Mutual.

Procedural History

This case was filed on August 31, 1994 in state court. It was removed to this Court on September 22, 1994. Defendants ("Principal Mutual"), filed their Motion for Summary Judgment on March 28, 1995. Principal Mutual filed a supplemental letter brief in support of its Motion on March 29, 1995 and a Reply Brief on March 30, 1995. The Court heard from oral arguments from the parties on March 30, 1995, at which time the Court entered an Order granting Defendant's Motion for Summary Judgment.

Discussion

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that

the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *see Hansen v. Continental Ins. Co.*, 940 F.2d 971, 975 (5th Cir. 1991); *Hogue v. Royse City*, 939 F.2d 1249, 1252 (5th Cir. 1991). "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Celotex Corp. V. Catrell*, 477 U.S. 317, 327 (1986) (quoting Fed. R. Civ. P. 1).

"All facts contained in the pleadings, depositions, admissions, and answers to interrogatories are reviewed by 'drawing all inferences most favorable to the party opposing the motion.'" *James v. Sadler*, 909 F.2d 834, 836 (5th Cir. 1990) (quoting *Reid v. State Farm Mut. Auto Ins. Co.*, 784 F.2d 577, 578 (5th Cir. 1986)). However,

> "[w]hen a motion for summary judgment is made and supported as provided in this rule,

> an adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings, but . . . must set forth specific facts showing that there is a genuine issue for trial."

Diplantis v. Shell Offshore, Inc., 948 F.2d 187, 190-91) (quoting Fed. R. Civ. P. 56 (e)).

The focus of this Court is upon disputes over material facts; material facts are those facts likely to affect the outcome of the lawsuit under the governing substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986); *Phillips Oil Co., v. OKC Corp.*, 812 F.2d 265, 272 (5th Cir.), cert. denied, 484 U.S. 851 (1987). The Fifth Circuit stated, "[t]he standard of review is not merely whether there is a sufficient factual dispute to permit the case to go forward, but whether a rational trier of fact could find for the non-moving party based upon the record evidence before the court." *James*, 909 F.2d at 837; *see Matsushita Elec. Industr. Co. v. Zenith* Radio Corp., 475 U.S. 574, 486

(1986); *Boeing Co. v. Shipman*, 411 F.2d 365, 374-375 (5th Cir. 1969) (en banc).

Americans With Disabilities Act

In discrimination cases, the plaintiff must first prove a prima facie case of discrimination by a preponderance of the evidence. *Sherman v. Optical Imaging Sys., Inc.*, 843 F.Supp. 1168, 1181 (E.D. Mich. 1994). To establish a prima facie case of ADA discrimination, Taylor must establish that (1) he is an individual with a disability; (2) he is otherwise qualified to perform the essential functions of his job, with or without reasonable accommodation; and (3) he was discriminated against because of his disability. *Sherman*, 843 F. Supp. At 1181.

It is not disputed that Taylor is an individual with a disability. Taylor also concedes that he has no claim under the ADA for any event after July 6, 1993, the day he went on disability. The only relevant time period, then, is between

April 1993 and July 6, 1994. During this time frame, Tyalor was still otherwise qualified to perform the essential functions of his job with a reasonable accommodation; it is agreed that he was not able to perform the essential functions of his job without reasonable accommodation. However, the dispositive question is whether or not Taylor requested reasonable accommodation.

It is the responsibility of the disabled employee to inform the employer that he needs an accommodation. 29 C.F.R. §1630.9 (1992) and notes following. Employers are obligated to make reasonable accommodations only to the physical or mental limitations resulting for, the disability of a qualified individual of which the employer knows. *Id.* Principal Mutual became aware of Taylor's bipolar disorder in April of 1993 and therefore was not obligated to make any accommodations prior to that time. Subsequent to April of 1993, Taylor must show that he did make a request for

reasonable accommodations. Taylor's deposition, which was submitted as part of Defendant's summary judgment evidence and is not controverted, does not show that Taylor ever requested any accommodation. While Taylor says that he-polarism or manic depression is and also let his boss know that he had been diagnosed with this condition, he assured Mr. Matthews that he could do his job at the "management conference" that took place in April of 1993. He later sent Mr. Matthews an E-Mail communication that indicated he could raise his performance to the levels Principal Mutual was asking for under the terms of his probation and even higher. This is not controverted by any evidence, only the assertions of Plaintiff's counsel that this amounts to a request for accommodation. This Court does not agree, nor does this Court believe that his created any fact issue; rather it is clear and uncontroverted evidence that Taylor did not ask for any accommodation. Taylor therefore

fails to establish a prima facie case of ADA discrimination.

Accordingly,

IT IS ORDERED that Defendant's Motion for Summary Judgment is hereby GRANTED.

SIGNED this 16th day of May, 1995.

/s/ David Briones
DAVID BRIONES
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MACK W. TAYLOR,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	C. A. NO. EP-94-CA-318-DB
	§	
THE PRINCIPAL FINANCIAL GROUP, INC. and PRINCIPAL MUTUAL LIFE INSURANCE COMPANY,	§	
	§	
	§	
Defendants.	§	

ORDER GRANTING SUMMARY JUDGMENT

Defendants Principal Mutual Life Insurance Company and The Principal Financial Group, Inc. (together "Principal") have filed their motion for summary judgment regarding the claims against them of Plaintiff Mack W. Taylor, Jr. ("Taylor"). After considering the motion and any response filed thereto, and the applicable law, the Court finds the motion is well-taken and should be granted. It is accordingly,

ORDERED that Principal's motion for summary judgment is GRANTED; and it is further

ORDERED that Taylor shall take nothing against Principal and that all costs incurred by Principal shall be taxed against Taylor.

SO ORDERED.

SIGNED this 30th day of March, 1995.

/s/ David Briones
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MACK W. TAYLOR,	**§**	
	§	
Plaintiff,	**§**	
	§	
vs.	**§**	**C. A. NO. EP-94-CA-318-DB**
	§	
THE PRINCIPAL FINANCIAL GROUP, INC. and PRINCIPAL MUTUAL LIFE INSURANCE COMPANY,	**§**	
	§	
	§	
Defendants.	**§**	

FINAL JUDGMENT

In accordance with the Memorandum Opinion and Order signed on May 16, 1995, in the above-captioned cause, the Court now enters its Final Judgment in said cause under Rule 58 of the Federal Rules of Civil Procedure.

It is therefore ORDERED, ADJUDGED AND DECREED that the motion for Summary Judgment filed by the Principal Financial Group, Inc. and Principal Mutual Life Insurance Co., Defendants, in said cause is hereby

GRANTED.

It is consequently ORDERED, ADJUDGED AND DECREED that Plaintiffs' suit is dismissed with prejudice against said Defendants.

It is finally ORDERED that all parties shall bear their own costs.

SIGNED this 16th day of May, 1995.

/s/ David Briones
DAVID BRIONES
UNITED STATES DISTRICT JUDGE